

**FILED**  
 O'Clock *P*.M.  
 NOV 16 2011  
 SANDRA K. MARKHAM, Clerk  
 By: *Jacqueline Harshman*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 STEVEN CARROLL DeMOCKER, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

*P1300CR*  
 Case No. 20080-1339

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE WARREN R. DARROW  
 STATUS CONFERENCE/ORAL ARGUMENT  
 JULY 9, 2010  
 Prescott, Arizona

*MINA G. HUNT*

REPORTED BY  
 MINA G. HUNT  
 AZ CR NO. 50619  
 CA CSR NO. 8335

1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE  
4 BY: JOSEPH BUTNER, ATTORNEY  
5 and  
6 BY: JEFFREY G. PAUPORE, ATTORNEY  
7 255 East Gurley Street  
8 Prescott, Arizona 86301

9 For the Defendant:

10 LAW OFFICES OF JOHN M. SEARS  
11 BY: JOHN M. SEARS, ATTORNEY  
12 107 North Cortez  
13 Suite 104  
14 Prescott, Arizona 86301-3000

15 OSBORN MALEDON  
16 BY: LAWRENCE A. HAMMOND, ATTORNEY  
17 and  
18 BY: ANNE M. CHAPMAN, ATTORNEY  
19 2929 North Central Avenue  
20 21st Floor  
21 Phoenix, Arizona 85012-2794  
22  
23  
24  
25

1                   Proceedings had before the Honorable  
2   WARREN R. DARROW, Judge, taken on Friday, July 9,  
3   2010, at Yavapai County Superior Court, Division 6,  
4   120 South Cortez, Prescott, Arizona, before Mina G.  
5   Hunt, Certified Reporter within and for the State of  
6   Arizona.

## P R O C E E D I N G S

THE COURT: This is CR 20080-1339, state versus Steven Carroll DeMocker, who is present with his attorneys, Mr. Sears, Mr. Hammond and Ms. Chapman. The state is represented by Mr. Butner and Mr. Paupore.

This was the time set for status conference regarding my review of the record in this case to make findings under Rule 19.5. Also consideration of various motions to the extent I can at this point. And there could be a limitation on my ability to do that, especially with disclosure issues.

I realize having read the information that I've just received in the last, well, basically, this morning for me -- I read what I can and -- I've actually read everything that's come in except for the state's response to the motion for reexamination of conditions of release. I just saw that right now. And then also exhibits were attached to the state's supplement for the motion to extent time. I've just gotten those exhibits a few minutes ago.

I need to -- I believe I need to look at the rulings that Judge Lindberg made dealing with other issues regarding disclosure on various issues

1 at various times to really be able to deal with that  
2 in any depth.

3 I have in mind some things I want to  
4 address. But under these circumstances I want to  
5 ask the attorneys first if there is anything  
6 pressing or anything anyone believes should be taken  
7 up at the outset. I'll do that first.

8 Mr. Butner?

9 MR. BUTNER: Judge, I guess we could discuss  
10 the defendant's motion for reexamination of  
11 conditions of release. I think -- is the Court  
12 prepared to deal with that kind of an issue? We  
13 brought with us a representative from the sheriff's  
14 office -- Captain Rhodes -- who can explain how the  
15 defendant's visitation circumstances have been  
16 modified so that he can have regular visitation. We  
17 thought we should get that before the Court so the  
18 Court had an understanding of that, that the  
19 modification was made to accommodate the new trial  
20 schedule of four days a week and make sure that the  
21 defendant could have visitation on a regular basis  
22 during that kind of a trial schedule.

23 And then we can litigate the other issues,  
24 I think, when the Court feels comfortable doing  
25 that, when the Court has had an opportunity to

1 review, I guess, really what amounts to a rather  
2 significant amount of material provided to the Court  
3 that substantiates in a factual basis the state's  
4 request for the extension to use this additional  
5 evidence.

6 THE COURT: I think that we can take up the  
7 issue to some extent. I want to say that I'm very  
8 conscious of that as talking to the jurors on  
9 Wednesday, talking about trial days. And I think  
10 Mr. Sears wanting to use the two days in the week,  
11 being conscious of the fact that now there is  
12 significant increase in the anticipated length of  
13 trial, everyone here is very cognizant of the  
14 presumption of innocence and what that means to have  
15 the trial just go on.

16 And it's not a light decision to say this  
17 date might not be available, this week might not be  
18 available. I think all of us are conscious of  
19 that.

20 I think part of my ability to make a  
21 meaningful ruling, though, on this issue relates to  
22 a lot of work and familiarity with the entire  
23 background of the case too.

24 But let's start with what you brought up,  
25 Mr. Butner, with regard to modifying the conditions

1 as they are now in terms of visitation.

2 Mr. Sears, have you had a chance to talk  
3 to Mr. Butner about this and proposed changes that  
4 he's mentioned?

5 MR. SEARS: No, Your Honor. The first we knew  
6 of that was in the brief response that you said  
7 you've seen but haven't had a chance to read. The  
8 first reference to changes in visitation that we  
9 knew about came in in this pleading. And assuming  
10 that's what Captain Rhodes would say, I don't know  
11 that we need to have him simply repeat what it is.

12 But the circumstances is that the prior  
13 accommodation for Mr. DeMocker given the previous  
14 trial schedule was that he could have visitation  
15 every other Tuesday. We were only going to be in  
16 court every other Tuesday. So on those Tuesdays we  
17 were not in court, the sheriff would change his  
18 visitation, his otherwise visitation, which was  
19 always going to be on a trial date to that date.

20 And so this new proposal that he would  
21 have visitation from 7:30 to 9:00 every Monday  
22 through the remainder of the case. And assuming  
23 that's what Captain Rhodes would say, we'll accept  
24 that at face value if that's their proposal now.

25 THE COURT: Is that the --

1           MR. BUTNER: Just to make it completely clear,  
2 as Captain Rhodes points out to me, that's 7:30 to  
3 9:00 a.m.

4           THE COURT: Okay.

5           MR. BUTNER: And that's every Monday.

6           THE COURT: Then that's going to happen in that  
7 regard at this point in any event.

8           MR. SEARS: It would appear so. What we wanted  
9 to talk about in terms of release conditions really  
10 bore more on the new trial schedule and the length  
11 of trial. The question of how the new trial  
12 schedule would impact visitation is part of what we  
13 wanted to talk about. Certainly more that I think  
14 is relevant. Certainly happy to do that now.

15          THE COURT: I don't want to take that up right  
16 now. I want to have more familiarity with the case  
17 before I do that. I have read the motion and  
18 obviously the response, the other information as  
19 well. I don't want to go any further into that  
20 today.

21          MR. SEARS: Your Honor, we have otherwise  
22 scheduled today motions relating to some  
23 disclosure. The state has now filed a 69th  
24 supplemental and last night filed a 70th  
25 supplemental disclosure, which obviously could not



1 be part of our motion. But it relates in some  
2 respect to the matters that are in the 69th  
3 supplemental disclosure. And am I hearing you also  
4 that you want some additional time before we take  
5 that up?

6 THE COURT: There are parts of this I want to  
7 address now with regard to the disclosure. I want  
8 to address anything that facilitates resuming the  
9 trial. That's what I want to address. Some of  
10 these things -- again, I think it's very important  
11 to address release conditions as soon as I  
12 meaningfully can.

13 But there are some matters in here that I  
14 think need to be discussed right away. And foremost  
15 in my mind anyway is some concern about Mr. Sears  
16 once again being a witness. It seems that's really  
17 something that's being urged. That needs to be  
18 talked about before we go any further.

19 What I saw in the record I have reviewed  
20 is there was an issue before regarding the email  
21 that came up.

22 MR. SEARS: The golf head cover.

23 THE COURT: Yeah. Right. It involved that.  
24 And now there is one with something heard through  
25 the vent or something like that.

1           MR. SEARS: If I could give you a quick  
2 overview.

3           THE COURT: Do you agree, Counsel, we should  
4 take that up?

5           Mr. Butner?

6           MR. BUTNER: I think that would be appropriate,  
7 Judge, but there is other -- we have now  
8 established -- bear in mind, Judge, we're not on a  
9 mission to make Mr. Sears a witness in this case.  
10 That's not what is going on here.

11           What has happened is things have come up  
12 or rulings have been made by the Court that  
13 necessitate Mr. Sears being made a witness. And one  
14 of them is this email ruling which we're going to  
15 ask this court to reconsider. And Judge Lindberg  
16 left the door open for that.

17           The email was ruled to be admissible, at  
18 least on a tentative basis, this being an anonymous  
19 email. And I don't know if the Court is  
20 sufficiently familiar with the that particular  
21 aspect of the case.

22           THE COURT: I have background in that. I know  
23 exactly what you're talking about.

24           MR. BUTNER: Well, prior to the anonymous  
25 email, Mr. Sears received information from his

1 client, which was disclosed to the state, that  
2 approximately -- and I'm thinking it was, like, 30  
3 days prior to the anonymous email. Mr. DeMocker  
4 while in the jail had received information from a  
5 voice in the vent, so to speak.

6 And that would be a communication from an  
7 adjacent cell through the vent system in the jail  
8 that this person on the other end of this vent was  
9 familiar with the circumstances of how Carol Kennedy  
10 was killed and that she was killed by these guys in  
11 a prescription drug ring and that it was somehow  
12 connected to James Knapp. That's the gist of what  
13 this communication was about.

14 Mr. Sears received that information. And  
15 who knows what he was doing with it at that point in  
16 time. But then approximately 30 days later this  
17 anonymous email comes in directed to Mr. Sears and  
18 apparently was being attempted to be sent to me.  
19 And it came from an internet cafe in Phoenix. But  
20 we didn't know that at the outset, of course. That  
21 was the subject of significant investigation by the  
22 Yavapai County Attorney's Office.

23 The email was provided by Mr. Sears to the  
24 Yavapai County Attorney's Office approximately three  
25 weeks after he received it. And then Mr. DeMocker

1     consented to an interview and came to the Yavapai  
2     County Attorney's Office and was interviewed by  
3     investigators -- and I was present at this  
4     interview -- concerning this email and then the  
5     voice in the vent also.

6             And when the Judge ruled that the email  
7     was going to be admissible in this case, it made  
8     this information that had previously been provided  
9     to Mr. DeMocker and Mr. Sears highly relevant  
10    because, basically, it was the same story that was  
11    reiterated in the email.

12            And it also, then, made these cell block  
13    members in the jail that were in close proximity to  
14    Mr. DeMocker potential witnesses at that point in  
15    time once the Court made the ruling about the  
16    email.

17            And so that's what gave rise to the state  
18    filing another disclosure saying here we've got a  
19    bunch of these people that are witnesses, and  
20    Mr. Sears is also a witness again. But there is  
21    also an additional reason why Mr. Sears may be a  
22    witness in this case. And that's because he was the  
23    notary public on disclaimers of insurance proceeds  
24    that were filed with The Hartford life insurance  
25    company to obtain payment of the \$750,000 in life

1 insurance proceeds on Virginia Carol Kennedy's  
2 life. And what happened with those life insurance  
3 proceeds is they were processed. One of them went  
4 through --

5 THE COURT: I read your chronology that you had  
6 in your pleading.

7 MR. BUTNER: Okay. Well, then you, basically,  
8 know what happened. And that's what Exhibit A is  
9 about, what happened with those monies from those  
10 proceeds. They were processed through a  
11 testamentary trust and through the estate. And in  
12 one instance they went through the account of Katie  
13 DeMocker. And in the other instance they went  
14 directly through the account of Steven DeMocker  
15 after going through the estate and testamentary  
16 trust.

17 They were then transferred to Steven  
18 DeMocker's mother's account, and then they were then  
19 transferred back to Mr. Sears and Osborn Maledon law  
20 firm, all of this in a very fast amount of time.  
21 Wire transfers and things of that nature. Except  
22 for two checks.

23 The long and short of it being that  
24 Mr. Sears is also a witness in that particular chain  
25 of events as a result of notarizing the disclaimers

1     that were signed by Mr. DeMocker, and all of this  
2     being, basically, a distribution of life insurance  
3     proceeds that had been previously withheld by  
4     Hartford life insurance company on the basis that  
5     Mr. DeMocker was a suspect, was part of the  
6     investigation of the homicide of Virginia Carol  
7     Kennedy.

8             And what happened is although he  
9     disclaimed any interest or rights in those proceeds,  
10    he ultimately received benefit in one instance.  
11    \$350,000 passed directly through his account. And  
12    all of that money then went back to his attorneys in  
13    the form of attorneys' fees in violation of the  
14    terms of the testamentary trust of Virginia Carol  
15    Kennedy's will through which all of those monies  
16    passed.

17            THE COURT: And I'm aware of that. You set  
18    that out all very clearly in the pleadings. So I've  
19    read that. But what I really want to deal with now  
20    because it just bears on the trial continuing is how  
21    Mr. Sears would exactly be a witness now. And I  
22    understand you're avowing here this is not some  
23    strategy to make Mr. Sears a witness and disrupt the  
24    defense -- is that you believe in good faith he now  
25    is a witness.

1 MR. BUTNER: That's correct.

2 THE COURT: I want to address specifically and  
3 objectively -- I want to start with the insurance  
4 question first if we can. What I heard was,  
5 basically, some type of chain of custody thing. I'm  
6 not making any decision now on that ultimate issue.

7 But as far as potential involvement as a  
8 witness by Mr. Sears, what I'm hearing is some type  
9 of chain of custody thing or notary, which I think  
10 the rules contemplate. If an attorney has that  
11 involvement, that doesn't require disqualification.  
12 Isn't that the law?

13 MR. BUTNER: That's half of it. And the other  
14 half of it is the fact that Mr. Sears knew when that  
15 disclaimer was executed that those monies were going  
16 to end up coming full circle back to Mr. Sears on  
17 behalf of Mr. DeMocker. So it's two things.

18 THE COURT: Again, if there were a decision  
19 that that evidence would be admissible, I think that  
20 would be able to be established, if you will, by  
21 documentation records other than what would be  
22 needed from testimony from Mr. Sears.

23 MR. BUTNER: The only thing that -- it's a  
24 hearsay problem that can be stipulated around, so to  
25 speak, in terms of Mr. Sears and the disclaimer.

1 The problem that is not a hearsay problem is the  
2 fact that in doing this Mr. Sears knew that this was  
3 being done on behalf of Mr. DeMocker in order that  
4 those monies could be paid in the form of attorneys'  
5 fees to Mr. Sears and the law firm of Osborn and  
6 Maledon.

7 THE COURT: At the outset you're saying?

8 MR. BUTNER: At the outset.

9 THE COURT: Why don't we just stay with just  
10 that point if we can before we go to the other  
11 witnesses and the --

12 MR. BUTNER: Pardon?

13 THE COURT: You brought two aspects of how  
14 Mr. Sears might be a witness.

15 MR. BUTNER: He was also involved in the  
16 resignation of the trustee for the testamentary  
17 trust in terms of the documents being executed in  
18 that regard in order that this transaction could be  
19 facilitated with the payment of these attorneys  
20 fees. The trustees starting out to be -- it was  
21 first A.G. Edwards, Wachovia and James DeMocker,  
22 those two trustees. They were cotrustees, resigned,  
23 and then Katie DeMocker became trustee in the  
24 testamentary trust in addition to being the personal  
25 representative of the estate. She then resigned and



1 the defendant's girlfriend, Renee Girard, took over  
2 as trustee before the last payment of those  
3 insurance proceeds was made. And Mr. Sears was  
4 involved in that subsequent designation of Renee  
5 Girard as a trustee.

6 THE COURT: That's related to the issue I want  
7 to stay with now. I don't want to talk about the  
8 anonymous email now. I want to stay just with the  
9 insurance issue. Call it that.

10 Anything else on that before I hear from  
11 Mr. Sears?

12 MR. BUTNER: I think that's it in summary.

13 THE COURT: Thank you. Mr. Sears or someone  
14 from the defense would address just that, not the  
15 anonymous email.

16 MR. SEARS: I would begin by pointing out, Your  
17 Honor, in the disclosure in which I'm once again  
18 disclosed as a witness, they don't say anything  
19 about my alleged roll in the handling of these  
20 insurance proceeds. It is simply about the  
21 anonymous email, voice-in-the-vent story. Just  
22 point that out.

23 Let me just start by saying this, Your  
24 Honor: If the state is saying here in open court  
25 with the Yavapai County attorney here present that

1 the lawyers in this case for Mr. DeMocker have  
2 committed some criminal act or some unethical act,  
3 don't tiptoe around it. Just say it.

4 If they are here, essentially, saying that  
5 we were somehow part of some scheme to defraud  
6 somebody, Hartford insurance company or anyone else,  
7 say it right now. Before I go any further, I would  
8 ask the Court to invite the state to say what they  
9 mean.

10 THE COURT: Mr. Butner, have you said what you  
11 mean so far?

12 MR. BUTNER: Of course I have, Judge. If I had  
13 intended to accuse Mr. Sears of something, I would  
14 do that on the record. That is not what I am  
15 saying. The documents speak for themselves in this  
16 regard with the exception of Mr. Sears's knowledge  
17 at the outset when this disclaimer was executed that  
18 those funds were going to be funneled back to him  
19 and Osborn Maledon, just as the records indicate.

20 THE COURT: And I have to say I thought we were  
21 primarily going to be talking about the anonymous  
22 email issue right now.

23 MR. BUTNER: To clarify that, Judge, the reason  
24 that Mr. Sears hasn't been identified as a witness  
25 concerning these insurance proceeds is we just got

1     these documents and we haven't had opportunity to  
2     identify him as such. That's why I thought it was  
3     appropriate that I bring that to the Court's  
4     attention at this time and as clearly obvious in the  
5     time line and factual basis that we have set forth  
6     in our motion at this point.

7             THE COURT: Mr. Sears?

8             MR. SEARS: I think that's a good place to  
9     begin, Your Honor. Let's talk about why all of this  
10    information that the state has just now three months  
11    into the trial in this case decided to disclose is  
12    so wildly and outrageously untimely that it should  
13    be precluded on that basis.

14            The state has given you information which  
15    they had in their possession that in the summer of  
16    2008 before charges were brought against  
17    Mr. DeMocker that Mr. DeMocker had made inquiry  
18    about his insurance policies. The state has  
19    provided a chronology of intercepted jail calls --  
20    by the way, all of which have been preclude by prior  
21    orders of Judge Lindberg from this case but three of  
22    them. But they have nonetheless continued to  
23    provide a chronology of precluded jail calls of  
24    Mr. DeMocker in an effort to show that they have  
25    just now come to the realization on the prosecution

1 side what happened to the money.

2 We will talk in a bit about one particular  
3 call and one particular assertion about when the  
4 state says they first became aware of this and the  
5 fact that they claim that Hartford insurance company  
6 was lying to them about the payment of these  
7 benefits as recently as April of this year.

8 Here's what this looks like to us, Your  
9 Honor: You can see perhaps from what you've read  
10 that there was a pattern of conduct by the state  
11 that escalated in 2010 beginning the first part of  
12 February, latter part of January, in which they  
13 began to realize they were going to trial in just a  
14 few months and escalated their investigation and  
15 disclosure. And I think those facts just speak for  
16 themselves.

17 And as they were late disclosing  
18 information, we were filing motion after motion to  
19 preclude them. And there were a series of rulings  
20 from Judge Lindberg which granted us almost every  
21 time the relief we were requesting from precluding  
22 late disclosed evidence where there was no showing  
23 of due diligence by the state that would support the  
24 late disclosure of this information.

25 The most significant part of that was the

1 disclosure violations that caused Judge Lindberg to  
2 strike death penalty allegations, leaving the state  
3 with one remaining aggravator going forward in this  
4 case, as a sanction for their failure to disclose.

5 What concerns us over the last couple  
6 days, Your Honor, at a time when we think you should  
7 be doing what you need to do to be ready to resume  
8 the trial as quickly as possible and when we should  
9 be doing what we need to do to resume the trial, the  
10 state has interjected this new set of issues, not  
11 only issues relating to late disclosure, but issues  
12 for the first time pointing at us as lawyers in this  
13 case as somehow bad actors in this case, potential  
14 witnesses in this case.

15 We think that it is a pretty clear and  
16 rather naked attempt on the part of the state to  
17 distract the Court at a time when the Court needs to  
18 be focusing its full attention on something else.  
19 And so I make that observation, and I think the  
20 facts support it.

21 Nonetheless, the record shows that the  
22 state knew much about the status of these insurance  
23 policies. The probate filings of the estate of  
24 Carol Kennedy were public record. They were  
25 obtainable and obtained by state months and months

1     ago. The state really is hanging their hat on one  
2     contact from Sergeant Boelts, who is also in the  
3     courtroom here, with a representative of Hartford in  
4     April of this year in which the document filed today  
5     from the Court says that -- let me read you what  
6     they said here.

7             What they say here today is that on  
8     April 22, 2010, Lieutenant Boelts contacts Hartford  
9     life, is advised that Hartford has not paid death  
10    benefit premiums for Virginia Carol Kennedy. And it  
11    cites a supplement. This is what the supplement  
12    stays. It's Supplement 161. On 4/22/10 I spoke  
13    with Nancy Frogstad, a representative of Hartford  
14    life insurance. She did confirm that prior to  
15    making the application for the death benefits on  
16    August 21, 2008, Steve DeMocker did make a phone  
17    call to The Hartford and did ask about disclaiming  
18    the proceeds to his daughters. This information was  
19    contained in the notes portion of their file on the  
20    case.

21            That's what the report says, Your Honor.  
22    It does not say what the state's summary says. It  
23    says nothing about Hartford telling  
24    Lieutenant Boelts that they had not paid death  
25    benefits. That's just not in the report. And

1     that's concerning to us that the state will provide  
2     something to the Court in an effort to persuade the  
3     Court to a position that cites to the disclosure in  
4     this case in an utterly incorrect and incomplete  
5     way.

6             We're getting so far afield from what we  
7     need to talk about here, Your Honor, to get ready to  
8     resume the trial in this case that I really don't  
9     know where to begin again. But I will say this:  
10    The question of the Hartford insurance company and  
11    handling of the proceed is -- and this late  
12    disclosure and attempt to interject these new issues  
13    is so utterly late that no twisting and stretching  
14    of Rule 15.6 could ever, we think, permit or support  
15    its admission in this case. It's sanctionable  
16    conduct. The rule is clear about that. And that is  
17    our concern.

18            The distraction factor is obvious. Here  
19    we are when we should be talking about other things,  
20    as you said, related to getting this case on track  
21    to resume the trial, we're here talking about these  
22    other matters that are out of bounds.

23            The question of where the money came from  
24    to pay the lawyers in this case we think is utterly  
25    irrelevant. We're not terribly comfortable talking

1     about these matters here in open court. If the  
2     Court wants to hear more information, we would  
3     suggest removing to chambers on the record and  
4     continuing the discussion there.

5             But our response to it generally is so  
6     what. So what about anything related to where the  
7     money came from to pay Mr. DeMocker's lawyers in  
8     this case. The state, I think, understandably  
9     desperately wants to get that information in front  
10    of the jury because they think somehow it would  
11    smear the defense lawyers in this case with the idea  
12    of blood money, that this was Carol Kennedy's life  
13    insurance proceeds and that it is outrageous that  
14    the defendant's defense was funded somehow by this  
15    money. And they provided disclosure checks from  
16    this money.

17            There is a long, complicated, detailed and  
18    in the end totally reasonable explanation that  
19    involves other lawyers who are not part of the case  
20    but have now been dragged in as witnesses. It  
21    involves probate laws, probate proceedings, trust  
22    law, the handling the money, bank records, the 400  
23    pages of bank records we were given at 7:00 o'clock  
24    last night in this case.

25            It has created a false issue in this



1 case. We think that part of your decision to  
2 preclude this as being late can also include  
3 reasonably and should include a simple finding that  
4 under 401, 402 and probably most particularly 403,  
5 this subject matter, the question of where the life  
6 insurance proceeds ultimately landed is irrelevant  
7 and if admitted would be unfairly prejudicial to the  
8 defendant balanced against no probative value.

9 The question of how the family chose to  
10 fund the defense in this case or part of the defense  
11 in this case is not a matter that is probative of  
12 any fact necessary to determining whether Steven  
13 DeMocker killed Carol Kennedy. It is not a fact  
14 that is relevant in any context.

15 It is simply an effort on the part of the  
16 state to dirty up not only the defendant but the  
17 defendant's family and ultimately the defendant's  
18 lawyers in the eyes of the jury. I think that's a  
19 sufficient basis for this court to end this  
20 discussion now and go no further.

21 There are many troubling aspects about the  
22 way in which the state has proceeded with this  
23 case. One of them is that in a response filed, that  
24 you have in front of you, they have talked about a  
25 computer search that has to do with life insurance

1 proceeds.

2 That computer search was precluded by  
3 Judge Lindberg. The state cannot provide a date for  
4 it. There is an order. It is unambiguous, and the  
5 state knows that. But that has not stopped the  
6 state from seeing if they can sneak that into the  
7 record again.

8 So between absolute misrepresentations  
9 like the one I read you from Lieutenant Boelts's own  
10 departmental report and use of precluded phone calls  
11 in the summary and the use of this precluded  
12 computer search here, a cynic would look at what the  
13 state's doing as an effort to see if they can run  
14 things by you that they know perfectly well they  
15 never could have gotten by Judge Lindberg if he were  
16 still presiding in this case.

17 And we think that is a big problem. If  
18 that's the way the case is going to be litigated,  
19 then we're going to spend more time out of court  
20 litigating these issues. And the state has now  
21 suggested they want you to reconsider issues  
22 notwithstanding the body of law, talking about the  
23 law of the case created by Judge Lindberg's  
24 rulings.

25 That's the way this is going proceed

1     rather than a reasonable resumption of the evidence,  
2     reaching a conclusion and the a verdict by this  
3     jury. That's where we see this heading, Your  
4     Honor. And it's very, very troubling. Just the  
5     fact that I've now spend 20 minutes up here talking  
6     about this is a pretty good example, I think, of the  
7     intended effect that the state had to distract the  
8     Court and derail the process that yesterday was  
9     moving in a pretty orderly fashion towards an early  
10    resumption of the trial.

11               So I would encourage the Court to simply  
12    preclude as untimely all of this information. The  
13    state can make no showing -- no truthful showing of  
14    due diligence in their failure to discover facts  
15    that were easily known to them from public records  
16    and from due diligence with Hartford months and  
17    months and months ago and to find that regardless of  
18    whether it's timely or not, it is so utterly  
19    irrelevant and so subject to a 403 prejudicial  
20    effect/probative value analysis that on that basis  
21    this evidence has no place in the trial.

22               It has nothing to do with the crimes  
23    charged against my client. It's simply an effort to  
24    bring in a collateral matter to smear Mr. DeMocker  
25    and his lawyers to the jury.

1 MR. BUTNER: Judge, if I might?

2 THE COURT: Yes, Mr. Butner. One moment. One  
3 rule I'm going to put in place right now is if there  
4 is any type of a motion to this court, requesting  
5 this court, that involves changing or reconsidering  
6 a ruling from Judge Lindberg, I actually need to see  
7 that at the very outset of the pleading. I need to  
8 know before I get started looking at it.

9 MR. BUTNER: I understand that, Judge.

10 THE COURT: Mr. Butner --

11 I just want to remind everybody. I want  
12 to get this back in focus a little bit. I started  
13 out by saying I'm not ready to make rulings on  
14 precluding evidence until I see what Judge Lindberg  
15 has done and I've seen previous arguments in detail  
16 and how those have been handled by the Judge. Keep  
17 that in mind.

18 I'm not going to make a call on a  
19 preclusion issue today. However, obviously if this  
20 information is precluded, that would remove one  
21 aspect of Mr. Sears being a witness.

22 With that in mind, please go ahead.

23 MR. BUTNER: Correct, Judge. First of all, I  
24 just draw the Court's attention to probate file  
25 No. P1300PPB2008-0202 here in the Yavapai County

1 Superior Court. That's the probate case number for  
2 the estate of Virginia Carol Kennedy. There is  
3 absolutely no mention whatsoever in that probate  
4 file of the life insurance policies or the proceeds  
5 from those life insurance policies. It's simply not  
6 there. The public records do not address the life  
7 insurance policies in that case number at all.

8 Secondly, the first time that the state  
9 became aware that the life insurance proceeds were  
10 paid was when the defense brought this up and opened  
11 the door to this discussion in their opening  
12 statement when Mr. Sears said that Mr. DeMocker  
13 disclaimed -- he has disclaimed to the life  
14 insurance proceeds and those benefits are were paid  
15 to the girls, Katie and Charlotte DeMocker.

16 That came as a significant surprise to the  
17 state in light of the fact that we had been advised  
18 all along that they haven't been paid. They've been  
19 denied. In fact, we have multiple copies of letters  
20 of denial from Hartford life insurance company.  
21 Those were all part of the disclosure that had been  
22 given to the defense.

23 Finally, of course, after hearing that we  
24 contacted Hartford life insurance company and found  
25 out, in fact, those proceeds had been paid. And we

1 began subpoenaing the records to determine where  
2 those proceeds went. And that's when we discovered  
3 that, in fact, those proceeds went to the estate in  
4 one instance and to the testamentary trust in  
5 another instance. And, basically, they were paid to  
6 the estate even though there was no contingent  
7 beneficiary on the \$500,000 life insurance policy.  
8 They were paid to the testamentary trust as the  
9 second -- as the contingent beneficiary on the  
10 \$250,000 life insurance policy.

11 Those proceeds from the life insurance  
12 policies were then processed quickly through the  
13 testamentary trust in violation of the provisions of  
14 the testamentary trust. The provisions of the  
15 testamentary trust call for the corpus to not be  
16 distributed until the oldest child turns 25 years of  
17 age.

18 The only exceptions for distribution of  
19 corpus would be for the education, health or benefit  
20 of the minor child or the children since they're not  
21 minors.

22 So this is not some sort of a false issue  
23 in this case, Judge. The one aggravating factor  
24 that was not stricken by the Court concerning the  
25 death penalty was pecuniary gain. After we went out

1 of that section of this case, there was discussion  
2 with the Court about the fact that there is going to  
3 be evidence concerning motive in this case. And a  
4 lot of the evidence, the significant evidence,  
5 concerning motive in this case is about pecuniary  
6 gain and it's about the life insurance policies  
7 totalling \$750,000.

8 And the simple fact of the matter is that  
9 the jury has a right to know and needs to know that,  
10 in fact, even though Mr. DeMocker disclaimed any  
11 right, title or interest in those life insurance  
12 policies, in one instance those life insurance  
13 monies were paid directly into his the account  
14 almost immediately after they were received, and in  
15 another instance they passed through the  
16 testamentary trust of his deceased wife and then  
17 ultimately were paid back to his attorneys. And  
18 that's the same thing where the other proceeds went  
19 directly through his account.

20 In other words, Mr. DeMocker managed to  
21 gain the benefit of those life insurance proceeds  
22 after he had killed his ex-wife. And that is  
23 something the state is entitled to argue to this  
24 jury. It's significant evidence in this case of  
25 motive and, of course, of pecuniary gain by the

1     defendant.

2           THE COURT: Mr. Butner, you've listed a number  
3     of attorneys now as potential witnesses.

4           MR. BUTNER: Basically, those -- the attorneys  
5     as witnesses are to address any hearsay argument  
6     about the documents that were being handled at this  
7     point in time, Judge. But in Mr. Sears's case, of  
8     course, as I stated earlier, it's to demonstrate  
9     that he was assisting the defendant and that those  
10    monies were going to come back for the defendant's  
11    benefit and he knew that at the time.

12          THE COURT: You're bringing up issues that  
13    involve what can properly be done with a trust,  
14    things of that nature, listing these people. That  
15    would be a potential civil type trial of a month  
16    long to get into those kinds of issues. I'm just --  
17    are you suggesting that that -- you think that might  
18    head in this proceeding?

19          MR. BUTNER: No. I don't see that happening at  
20    all, Judge. I think it's a rather straightforward  
21    proposition. The monies were paid by the insurance  
22    company. They were paid in April of 2009. One of  
23    the payments was in the hands of Mr. DeMocker's  
24    attorneys by August of 2009 after having passed  
25    through the testamentary trust.



1           And then the other payment -- actually it  
2   was -- the monies came in approximately at the same  
3   time, basically, on the same date in April of 2009.  
4   That would be one check for \$254,000 and the other  
5   check -- I think it was about 500 and some thousand  
6   dollars.

7           One went into the estate. The other went  
8   into the testamentary trust. They then both were in  
9   the testamentary trust. They were paid out of the  
10   testamentary trust. The first one was paid out --  
11   they actually were paid out in two separate checks,  
12   one for 354. And that went out to the account of  
13   Katie DeMocker. And from Katie DeMocker's account  
14   it then went back to the account of Janice  
15   DeMocker. And from Janice DeMocker it then went to  
16   the defense attorneys. That took place in August of  
17   2009.

18           The other payment remained in the  
19   testamentary trust account. And then there was the  
20   substitution of trustee to the defendant's  
21   girlfriend, Renee Girard. And those monies were  
22   transferred directly into Steven DeMocker's  
23   account -- \$350,000. And then those monies then  
24   went to the account of Janice DeMocker. And from  
25   Janice DeMocker then they went to Mr. DeMocker's

1 attorneys.

2 So it was a fairly direct path. And  
3 clearly for the benefit of the defendant and clearly  
4 after he had disclaimed any right, title or interest  
5 to those monies.

6 And the jail recordings that were  
7 mentioned by defense counsel -- those recordings,  
8 although they may have been precluded on other  
9 bases, become highly relevant at this point in time  
10 and should be allowed because they demonstrate the  
11 argument that took place between Steven DeMocker and  
12 his daughter Katie DeMocker and the discussion that  
13 took place between Steven DeMocker and Renee Girard  
14 as to moving \$350,000 and how Steven DeMocker  
15 controlled all of these monies from inside the jail  
16 house by virtue of his contacts with Katie DeMocker  
17 telephonically and Renee Girard telephonically and  
18 in person.

19 THE COURT: Mr. Sears, if you want to say  
20 something briefly about this. Because I'll tell you  
21 right now my plan had been to really look into trial  
22 transcripts, look at witnesses and what has been  
23 testified so far. I was going to request if the  
24 state could provide the anticipated witnesses, the  
25 next few, so that I could really target anticipated

1 testimony there and be familiar with prior rulings.  
2 And now we're into a whole different matter. And I  
3 just haven't read enough. I know there is a  
4 great -- I'm assuming that the documents relating to  
5 this specific issue were in this supplement here --  
6 the attachments.

7 Is that right?

8 MR. BUTNER: That's correct, Judge.

9 THE COURT: Mr. Sears, as I said, so you know  
10 where I'm at with that.

11 MR. SEARS: Let me just point out a couple  
12 things that I think may help the Court address your  
13 concerns. The phone calls were precluded not on  
14 other grounds. They were precluded because they  
15 were late disclosed. So that is very different than  
16 saying they were precluded on separate independent  
17 evidentiary bases.

18 They were simply precluded because they  
19 were part of this massive late disclosure in the  
20 spring -- the late winter and spring of 2010.

21 The Court is right. The aspects of this  
22 case the state is raising about the probate of Carol  
23 Kennedy's will, in which Katie DeMocker was the  
24 person represented by Christopher Kottke, whom I  
25 think the Court may know, independent counsel

1     representing them, and the transfers, I think,  
2     demonstrate a couple things. I think they  
3     demonstrate pretty clearly that the state -- and  
4     it's understandable because Mr. Butner is a criminal  
5     prosecutor -- has a very limited knowledge of  
6     probate law. But there is nothing at all untoward  
7     about a testamentary trust being administered  
8     outside of the jurisdiction of the Court. The Court  
9     knows that. The will had a pour over provision so  
10    that the money that went, as I understand it, into  
11    the estate poured over into the testamentary trust.  
12    It was subject to the dispositive provisions of the  
13    trust.

14               I think the Court also would understand we  
15    could have days of testimony that would support  
16    this. But I think the conclusion will be that the  
17    decision to make modifications to the dispositive  
18    provision of the trust ultimately is in the  
19    discretion of the trustee. And I think Mr. Kottke  
20    can demonstrate how that was handled. And it is not  
21    a difficult matter. It is not an unusual matter to  
22    make such modification. The state's sort of bold  
23    assertion that something was done in direct  
24    violation of the express wishes of Carol Kennedy is  
25    simply not supported by what the evidence would be.

1 It would take us a long time to get to the bottom of  
2 that evidence.

3 Mr. Schmidt and Mr. Wilson, with whom I'm  
4 sure the Court is also familiar, were retained on a  
5 coverage question to determine whether or not there  
6 was a basis for Hartford declining coverage. And my  
7 role, which is what started this whole discussion,  
8 as a notary public was simply because I saw  
9 Mr. DeMocker on a regular basis. And unless the  
10 state is disputing this, I am a notary public in the  
11 state of Arizona. And I don't think it's too  
12 difficult to imagine why it was more convenient for  
13 me to take documents prepared by other people and  
14 have Mr. DeMocker sign them in my presence and me  
15 notarize them.

16 I didn't hear a suggestion from the state  
17 that there is something improper about my acting as  
18 a notary public in this case, thank goodness.

19 And that's the sum total. The rest of  
20 this matter -- at some point we will have to address  
21 this, Your Honor, because these are serious  
22 allegations. I think if the state were correct,  
23 which I know they're not -- but if the state were  
24 correct in these assertions, it would impact on not  
25 just my ability to continue to represent them but by

1 inference Mr. Hammond and Miss Chapman and their  
2 firm from participating in this case.

3 These are serious allegations being rather  
4 lightly tossed around by Mr. Butner. And while I  
5 accept his representation that if he were going to  
6 accuse me of something bad, he wouldn't do anything  
7 but say it, nonetheless here we are. There is some  
8 suggestion there is something improper in the way  
9 all this was handled.

10 It will take a very long time to flesh  
11 that out. But the answer will be that nothing  
12 improper was done. Ultimately it's not only that.  
13 It's nothing was improperly done in an area that has  
14 no relevance to this case. That's really the point  
15 of this, that what was done with this money and how  
16 it was used, how the lawyers were paid or not paid  
17 is not a matter that has any place in the trial of  
18 this case. It's simply not a fact that the jury  
19 needs have in front of them to make a determination  
20 about whether Steven DeMocker killed Carol Kennedy  
21 or not.

22 It has all of the glamour and glitz that  
23 the state wants to as ascribe to it but none of the  
24 substance.

25 THE COURT: I'm going to direct that the

1 parties submit to me anything else on this issue. I  
2 categorize it as the insurance issue. We all know  
3 what we're talking about. I want simultaneous  
4 filing and to have that by noon on Monday.

5 And since I'll be in the Verde on Monday,  
6 I want it -- you know, that's the other thing.  
7 Everything is going to go through Division 6. I  
8 want to do that in this matter so the JA here  
9 receives everything and I don't miss something  
10 between the two districts. But I want that emailed  
11 to me or faxed to me in the Verde by Monday on this  
12 issue.

13 If there is anything more even today,  
14 because now I will be focusing on this immediately.  
15 And unfortunately I'll have to probably delay  
16 getting through some of the transcripts.

17 MR. BUTNER: Judge, to clarify, should this be  
18 emailed to you or to Robin?

19 THE COURT: Well. Thank you. Robin. Let's  
20 leave everything there and have it go that way  
21 rather than have anything track over to the Verde at  
22 all. Thank you.

23 I was going to indicate that I thought the  
24 trial probably -- I thought I could make my 19.5  
25 findings, both of them, the question of prejudice to

1 the parties, and then also the preparedness. I  
2 thought I could make the ruling on the prejudice to  
3 the parties and then, basically, announce that I  
4 thought we could resume the trial on Thursday, next  
5 Thursday.

6 I'm less confident on that after this  
7 morning. But just to give you an idea of what I was  
8 thinking, that's what I had thought the way things  
9 were going. I've read the evidentiary summaries,  
10 the transcripts of those rulings. And I thought I  
11 had a pretty good background in the more significant  
12 evidentiary issues and I could look at the  
13 transcripts and we could get started.

14 Mr. Butner, I still would like to ask if  
15 the state can do this. Can you give me -- I know --  
16 I believe Sergeant Huante was on the stand.

17 MR. BUTNER: Correct, Judge.

18 THE COURT: I know that's where the trial would  
19 pick up. But can you give me the next three or four  
20 anticipated witnesses?

21 MR. BUTNER: I can, Judge. And we'll email  
22 that to this division before the end of the day. We  
23 have put that together, and I don't have that with  
24 me at this moment. But we will do that before the  
25 end of the day.



1           THE COURT: Okay. At this time I'm going to  
2 confirm what I had said to the jurors. They will be  
3 calling in on Tuesday evening to see about resuming  
4 on Wednesday. They could have been told on Thursday  
5 at that time. But we will be having at least a  
6 telephonic status conference before Tuesday  
7 evening. Let's put it that way. We're going to  
8 touch base on this again. You may have to set a  
9 specific hearing, oral argument on the question of  
10 Mr. Sears being a potential witness. That just may  
11 need to be the next thing that's addressed.

12           Mr. Butner, anything else you want to  
13 discuss?

14           MR. BUTNER: Nothing further at this time,  
15 Judge.

16           THE COURT: Mr. Sears?

17           MR. SEARS: No, Your Honor. We're just  
18 interested in getting this trial resumed and trying  
19 to avoid anything that would interrupt or delay that  
20 process. Thank you.

21           THE COURT: Thank you. Then we will be in  
22 recess.

23           (The proceedings concluded.)  
24  
25

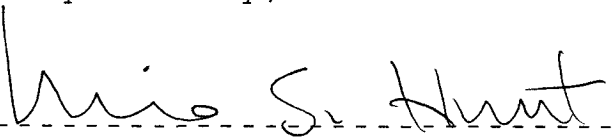
1     STATE OF ARIZONA     )  
2     COUNTY OF YAVAPAI   )     ss:     REPORTER'S CERTIFICATE

3             I, Mina G. Hunt, do hereby certify that I  
4     am a Certified Reporter within the State of Arizona  
5     and Certified Shorthand Reporter in California.

6             I further certify that these proceedings  
7     were taken in shorthand by me at the time and place  
8     herein set forth, and were thereafter reduced to  
9     typewritten form, and that the foregoing constitutes  
10    a true and correct transcript.

11            I further certify that I am not related  
12    to, employed by, nor of counsel for any of the  
13    parties or attorneys herein, nor otherwise  
14    interested in the result of the within action.

15            In witness whereof, I have affixed my  
16    signature this 12th day of July, 2010.

17                                   
18                                 -----  
19                                 MINA G. HUNT, AZ CR No. 50619  
20                                 CA CSR No. 8335